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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 BRINK'S GLOBAL SERVICES USA,
4 INC.,

Plaintiff,

5 v.

22 Civ. 6653 (PGG)

6 ARAT JEWELRY CORPORATION,
7 et al.,

Telephone Conference

8 Defendants.

9 -----x

10 New York, N.Y.
11 November 25, 2024
12 3:30 p.m.

Before:

13 HON. PAUL G. GARDEPHE,

14 District Judge

15 APPEARANCES

16 MCGUIREWOODS LLP
Attorneys for Plaintiff
17 BY: ROBERT F. REDMOND, JR.
MATTHEW D. FENDER
18 CARSON BARTLETT
NICK HOFFMAN

19 GERALD KROLL
20 Attorney for Defendants

21 ROBERT R. VIDUCICH
Attorney for Defendants

22 ENGSTROM, LIPSCOMB & LACK
23 Attorneys for Defendants
24 BY: STEVEN SHUMAN
25

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1 (Case called; appearances noted)

2 THE COURT: Let me first explain why we're doing this
3 by telephone. Counsel are variously located in Richmond;
4 Jackson, Wyoming, and; Los Angeles, California, so for that
5 reason, I'm proceeding by telephone today.

6 I'm going to be ruling on motions to seal that have
7 been filed by both sides. The background is as follows:
8 Plaintiff Brink's entered into agreements to transport property
9 belonging to 11 jewelry companies, each of whom is a defendant
10 in this case. (Cmplt. (Dkt. No. 1 15-16) In this action,
11 Brink's seeks a declaratory judgment regarding its duties and
12 liabilities under these agreements. (*Id.* 40-43)

13 Defendants have counterclaimed for breach of contract
14 negligence, fraud, violations of the General Business Law § 349
15 as well as for violations of the California Business &
16 Professional Code § 17200, *et seq.* (Ans. (Dkt. No 235) 5-60)

17 On May 6, 2024, Brink's moved for summary judgment.
18 (Dkt. No. 248) In connection with that motion, both sides have
19 moved to seal certain portions of the summary judgment record.
20 (See Pltf. Sealing Ltr. (Dkt. No. 266); Def. Sealing Ltr. (Dkt.
21 No. 268); see also Def. Objs. to Pltf.'s Sealing Reqs. (Dkt.
22 No. 260-2)

23 I will now rule on the parties' various sealing
24 motions. Beginning with Plaintiff Brink's sealing motion.
25 Brink's seeks to seal: (1) portions of eight exhibits attached

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1 to the declaration of Robert F. Redmond; (2) two lines in
2 Defendants' brief opposing Plaintiff's summary judgment motion;
3 (3) portions of three exhibits attached to the declaration of
4 Steven C. Shuman; (4) portions of the declaration of Daniel
5 Lipton; (5) three lines in Defendants' Local Rule 56.1 Amended
6 Response to Plaintiff's Local Rule 56.1 Statement; and (6)
7 three lines in Plaintiff's Response to Defendants' Statement of
8 Additional Facts. (Pltf. Sealing Ltr. (Dkt. No. 266) at 1-2)

9 Brink's argues that sealing as to these materials is
10 appropriate because (1) the parties agreed to treat the
11 information reflected in these documents as "Confidential" or
12 "Highly Confidential" under the Court's Protective Order (see
13 Protective Order (Dkt. No. 108)); and (2) this information
14 relates to sensitive security measures that Brink's uses.
15 (Pltf. Sealing Ltr. (Dkt. No. 266) at 3-4)

16 Defendants object to many of plaintiff's proposed
17 redactions, arguing, among other things, that the information
18 is already public and/or does not pose a security risk if
19 publicly disclosed. (Def. Sealing Ltr. (Dkt. No. 268) at 3;
20 Def. Objs. to Pltf. Sealing Reqs. (Dkt. No. 260-2) at 2-3)

21 Defendants, for their part, seek to seal eight
22 exhibits attached to the declaration of Robert Redmond. These
23 exhibits consist of tax return documents. Defendants also seek
24 to seal dollar amounts taken from these documents that are set
25 forth in Plaintiff's Local Rule 56.1 Statement and reproduced

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1 in Defendants' Response to Plaintiff's Local Rule 56.1
2 Statement. (Def. Sealing Ltr. (Dkt. No. 268) at 2-3)

3 I note that exhibits 1-69 and 1-87B to the Redmond
4 Declaration (See Dkt. Nos. 251-101 and 251-139 through 251-150)
5 are tax returns for Defendants Bonita Pearl, Inc. and Supreme
6 Collection Corporation. Defendants do not reference these
7 exhibits in their motion to seal. (See Def. Sealing Ltr. (Dkt.
8 No. 268) at 2) Brink's has, nonetheless, filed these exhibits
9 under seal. (See Pltf. Supp. Sealing Ltr. (Dkt. No. 276) at
10 1-2), and I assume that Defendant's failure to reference these
11 exhibits in their sealing motion is an oversight. Accordingly,
12 I will consider whether exhibit 1-69 and exhibit 1-87B to the
13 Redmond declaration should be maintained under seal, along with
14 the defendant's other tax return documents.

15 Defendants argue that these materials should be sealed
16 because they are portions of their tax return or reflect
17 inventory figures taken from their tax returns (Def. Sealing
18 Ltr. (Dkt. No. 268) at 2) Brink's argues, however, that the
19 inventory values are not confidential and only Social Security
20 Numbers and Tax Identification Numbers should be redacted from
21 the relevant tax returns. (Pltf. Sealing Ltr. (Dkt. No 266) at
22 5)

23 I will now address the legal standards that govern the
24 parties' sealing motions. As a general matter, documents filed
25 in support of a motion "are judicial documents to which a

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1 presumption of immediate public access attaches under both the
2 common law and the First Amendment." *Lugosch v. Pyramid Co. of*
3 *Onondaga*, 435 F.3d 110, 126 (2d Cir. 2006). This presumption
4 of access "can be overcome only by specific, on-the-record
5 findings that higher values necessitate a narrowly tailored
6 sealing." *Id.*

7 The Second Circuit has articulated a three-step
8 process for determining whether documents should be placed
9 under seal. First, a court must determine whether the
10 presumption of access attaches. A presumption of access
11 attaches to any item that constitutes a "judicial document" --
12 that is, an "'item relevant to the performance of the judicial
13 function and useful in the judicial process." *Id.* at 115.

14 If the court determines that the item to be sealed is
15 a judicial document, the court must then determine the weight
16 of the presumption of access. "[T]he weight to be given the
17 presumption of access must be governed by the role of the
18 material at issue in the exercise of Article III judicial power
19 and the resultant value of such information to those monitoring
20 the federal courts.'" *Id.* at 119.

21 Generally, the information will fall somewhere on a
22 continuum "from matters that directly affect an adjudication to
23 matters that come within a court's purview solely to ensure
24 their irrelevance." *Id.* Finally, after determining the weight
25 of the presumption of access, the court must "balance competing

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1 considerations against it." *Id.* at 120. "Such countervailing
2 factors include but are not limited to the danger of impairing
3 law enforcement or judicial efficiency and the privacy
4 interests of those resisting disclosure." *Id.*

5 Here, the materials at issue were submitted in
6 connection with plaintiff's motion for summary judgment and
7 thus are clearly "judicial documents." Moreover, there is a
8 strong presumption of access to these submissions because they
9 will "directly affect" this Court's adjudication of the motion.
10 *See, e.g., Standard Inv. Chartered, Inc. v. Nat'l Assn. of Sec.*
11 *Dealers, Inc.*, No. 07 Civ. 2014, 2008 WL 199537, at *16
12 (S.D.N.Y. Jan. 22, 2008) ("Motion papers are judicial documents
13 and are thus subject to a strong presumption of access under
14 the First Amendment.")

15 To rebut the strong presumption of public access here,
16 the parties must offer specific facts "demonstrating that
17 closure is essential to preserve higher values and is narrowly
18 tailored to serve that interest." *Lugosch*, 435 F.3d at 120.

19 I will now address whether plaintiff has made the
20 necessary showing with respect to the material it seeks to
21 seal.

22 As I noted, Brink's seeks sealing as to portions of
23 eight exhibits to the Redmond declaration. (Dkt. No. 251)

24 The first three exhibits are expert reports that were
25 prepared by security experts.

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1 As to the expert report of Robert Scally (Dkt. No.
2 251-80), the Court finds that portions that Plaintiff seeks to
3 maintain as sealed are properly sealed. The first excerpt on
4 page seven discusses average values of Brink's over the road
5 shipments; the second excerpt on page seven and the excerpt on
6 page twelve disclose the value threshold for bespoke security
7 measures for Brink's over the road shipments; and the excerpts
8 on page ten disclose specific vehicle security measures that
9 Brink's employs.

10 Brink's has adequately explained why the disclosure of
11 this information would pose a risk to the safety of Brink's
12 employees. See *Bernsten v. O'Reilly*, 307 F. Supp. 3d 161, 168
13 (S.D.N.Y. 2018) (citing public safety as a substantial interest
14 that may overcome the presumption of access); *United States v.*
15 *Doe*, 629 F. App'x 69, 73 (2d Cir. 2015) (affirming a sealing
16 order where "unsealing could jeopardize the safety of numerous
17 individuals").

18 As to the expert report of Nigel Paxman (Dkt. No.
19 251-81), Plaintiff seeks to seal an insurance policy number.
20 The application to seal is denied because Brink's has not
21 adequately explained why redaction of an insurance policy
22 number is "'essential to preserve higher values and is narrowly
23 tailored to serve that interest." *Lugosch*, 435 F.3d at 120.

24 To the extent that Brink's argues that the policy
25 number should be sealed because it is designated as

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1 Confidential or Highly Confidential under the protective order
2 in this case (See Protective Order (Dkt. No. 108); Pltf.
3 Sealing Ltr. (Dkt. No. 266) at 3), that argument is not
4 persuasive. As my individual rules state, "the parties'
5 consent or the fact that information is subject to a
6 confidentiality agreement between litigants is not, by itself,
7 a valid basis to overcome the presumption in favor of public
8 access to judicial documents." (Indiv. R. of Prac. II.B
9 (citing *In re Gen. Motors LLC Ignition Switch Litig.*, No. 14-
10 MD-2543(JMF), 2015 WL 4750774, at *4 (S.D.N.Y. Aug. 11, 2015)).

11 As to the expert report of Michael Beech (Dkt.
12 No. 251-82), the motion to seal is granted because the experts
13 designated for sealing disclose the value threshold for the
14 bespoke security measures for over the road shipments, and I
15 have already ruled that disclosure of this type of information
16 would pose a risk to the safety of Brink's employs.

17 Brink's also seeks to seal certain deposition
18 testimony.

19 As to the deposition of Michael Beech (Dkt. No.
20 251-83), the deposition that Brink's has designated for sealing
21 discusses the frequency with which Brink's reevaluates its
22 security procedures for the over the road division. The motion
23 to seal is denied as to this excerpt because Brink's has not
24 explained how the vague information discussed in the deposition
25 would jeopardize the safety of its employees. Accordingly, I

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1 am unable to make "'specific, on-the-record findings
2 demonstrating that closure is necessary to preserve higher
3 values and is narrowly tailored to that interest." *Lugosch*,
4 435 F.3d at 120.

5 Brinks also seeks to seal seven excerpts from the
6 Tandy Motley deposition. (Dkt. No. 251-86) The motion is
7 denied as to the first six excerpts, because I do not find that
8 disclosure of this vague information is likely to put Brink's
9 employees at increased risk. (See *id.* at 22:6-25 (discussing
10 general information about security training procedures); *id.* at
11 76:25 (disclosing that a Brink's location "probably" has
12 gates); *id.* at 83:4-25 (discussing the deponent's understanding
13 of what "standing guard" means); *id.* at 100:4-15 (discussing
14 Department of Transportation requirements that have been
15 incorporated into Brink's training); *id.* at 130:22-131:14
16 (detailing the deponent's reaction, observations, and initial
17 investigative steps once he realized the truck's seal had been
18 broken); *id.* at 147:4-8, 14-25 (discussing the deponent's
19 understanding of the import of "signing for the seal" of the
20 truck).

21 As to the last excerpt on page 165, the motion is
22 denied as to lines one through five because, as I have already
23 ruled, the fact that the trailer was not armored is not a
24 proper subject for sealing. (See Hearing Tr. (Dkt. No. 233) at
25 25).

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1 The testimony found at lines 6 through 14 on page 165
2 of the Motley deposition is irrelevant because it involves the
3 Brink's employees' next customer and the material that the
4 Brink's employees are scheduled to transport for their next
5 customer. Because the identity of the next customer and the
6 nature of the shipment is irrelevant to the issues in the
7 instant case, sealing will be granted. *See Sec. & Exch. Comm'n*
8 *v. Ripple Labs, Inc.*, 2023 WL 3477552, at *6 (S.D.N.Y. May 16,
9 2023) (granting motion to seal the identities of non-parties
10 because the third-party privacy interests outweighed the
11 minimal relevance of the information to the court's summary
12 judgment decision).

13 Brink's also seeks to seal an excerpt from the James
14 Beaty deposition. (Dkt. No. 251-88) The motion to seal is
15 granted because the testimony at issue involves a discussion of
16 Brink's color-coded security measures. This Court has
17 previously found that this information should be sealed. (See
18 Hearing Tr. (Dkt. No. 233) at 25)

19 Brink's also seeks to seal the testimony from the
20 deposition of certain law enforcement officers.

21 As to the excerpt from the deposition of Sgt. Jeremy
22 Viger (Dkt. No. 251-90), the motion to seal is denied. The
23 excerpt concerns the failure of police to find the broken lock
24 from the Brink's truck after the theft was discovered. Brink's
25 has not adequately explained how disclosure of this testimony

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1 would put its employees at risk.

2 As to the excerpts from the deposition of Officer
3 David Swigart (Dkt. No. 251-92), the motion to seal is denied.
4 Brink's has not adequately explained how any of the excerpts
5 would endanger its employees. (See *id.* at 22:15-25 (discussing
6 how Swigart had not seen the body camera footage of the
7 incident at the time he prepared the incident report); *id.* at
8 84:21-25 (discussing the time at which the Brink's truck left
9 the jewelry show, a matter that is disclosed in the Complaint);
10 *id.* at 115:18-25 (discussing how Swigart found metal shavings
11 and a broken seal on the ground near the Brink's truck); *id.* at
12 119:2-120:12 (discussing how Swigart's understanding of the
13 incident was evolving as the investigation continued).

14 Brink's also seeks sealing as to two sentences on
15 page 27 of defendant's opposition brief. (See Pltf. Sealing
16 Ltr. (Dkt. No. 266) at 1-2)

17 The first sentence discloses that Brink's has added
18 two new locking mechanisms to its trailers since the theft at
19 issue. In a February 28, 2024 bench ruling, I found that this
20 discussion of recent security changes should remain sealed.
21 (Hearing Tr. (Dkt. No. 233) at 25) Defendants now point out,
22 however, that Brink's has added a clamshell lock to its
23 trailers that is readily observable by anyone looking at a
24 Brink's truck. (Def. Objs. to Pltf.'s Sealing Reqs. (Dkt. No.
25 260-2) at 2)) To the extent that Brink's seeks to seal

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1 statements addressing its new clamshell lock, its motion is
2 denied because the presence of the clamshell lock is obvious to
3 any observer.

4 The second sentence on page 27 addressed Brink's
5 electronic locking mechanisms, but information concerning the
6 locking mechanisms is available on Brink's website. See *Secure*
7 *Long Haul Transportation*, Brink's,
8 <https://brinksglobal.com/secure-long-haul-transportation>.

9 In any event, given the vague nature of the
10 information that is disclosed, Brink's has not demonstrated
11 that the disclosure of this information would put its employees
12 at risk.

13 Brink's also seeks to seal three excerpts from
14 depositions attached as exhibits in the Declaration of Steven
15 C. Schuman, which has been submitted in support of defendants'
16 opposition brief. (Shuman Decl. (Dkt. No. 256); Pltf. Sealing
17 Ltr. (Dkt. No. 266) at 2))

18 As to the excerpt from the James Beaty deposition (see
19 Dkt. No. 255-11 at 95:24-99:23), the motion to seal is granted,
20 because the testimony discusses color-coded security measures.
21 As I noted earlier, I have previously approved the sealing of
22 this information concerning Brink's color-coded security
23 measures. (See Hearing Tr. (Dkt. No. 233) at 25)

24 As to the two excerpts from the Beech Deposition (see
25 Dkt. No. 256-10 at 101:3-15; Dkt. No. 256-11 at 101:3-15), the

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1 motion to seal is denied.

2 In this testimony, Beech discusses at a very high
3 level the security measures in place at the time of the 2022
4 theft. Brink's showing as to this testimony is not sufficient
5 to permit me to make "specific on-the-record findings
6 demonstrating that closure is essential to preserve higher
7 values" such as safety concerns. *Lugosch*, 435 F.3d at 120.

8 Brink's also moves to seal portions of the declaration
9 of Daniel Lipton that was submitted in Support of Defendants'
10 Opposition Brief. (Lipton Decl. (Dkt. No. 257-1); Pltf.
11 Sealing Ltr. (Dkt. No. 266) at 2)) As to paragraph 12 on pages
12 12 to 13, the sealing motion is granted. This paragraph
13 addresses common security techniques used by Brink's
14 competitors, and disclosure of this material could compromise
15 the security and safety of the competitors' employees.

16 As to the other proposed redactions, the motion to
17 seal is denied. Brink's has not demonstrated that keeping this
18 information sealed is "essential to preserve higher values and
19 is narrowly tailored to serve that interest." *Lugosch*, 435
20 F.3d at 120. (See Lipton Decl. (Dkt. No. 257-1) 8-10
21 (asserting that Brink's is obligated to guard customers'
22 valuables that are in Brink's custody and discussing whether
23 Brink's violated its own policies); *id.* 11(c) (stating that the
24 trailer at issue was a refrigerated trailer, the Court has
25 previously ruled that this subject is not appropriate for

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1 sealing (See Hearing Tr. (Dkt. No. 233) at 25))

2 Brink's has also moved to seal three excerpts from
3 defendant's Rule 56.1 amended response to plaintiff's Local
4 Rule 56.1 statement. (Def. R. 56.1 Am. Resp. (Dkt. No. 255-1);
5 Pltf. Sealing Ltr. (Dkt. No. 266) at 2)

6 The sealing motion is denied as to all three excerpts.
7 The first excerpt, found on page 35 of defendant's response,
8 states that the thieves managed to cut the lock through the
9 metal hasp. Brink's has not adequately explained how the
10 disclosure of this obvious fact associated with the 2022 theft
11 would compromise security or safety today.

12 The second excerpt is from defendant's additional
13 statement of facts and is Fact No. 394. This excerpt states
14 that Brink's has added two more locking mechanisms on its
15 trailers, including a clamshell lock. Because, as I noted a
16 moment ago, the existence of the clamshell lock is obvious to
17 anyone looking at a Brink's trailer, I have ruled that
18 information concerning the presence of the clamshell lock is
19 not properly sealed.

20 The third excerpt from defendant's additional
21 statement of the facts; it's Fact No. 395. This excerpt
22 discloses that at the time of the theft, electronic locking
23 mechanisms were available to Brink's. As I stated a moment
24 ago, this topic does not justify sealing.

25 Brink's also moves to seal three excerpts from page 38

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1 of its response to defendant's statement of additional facts.
2 (Pltf. Resp. (Dkt. No. 265-1) at 38; Pltf. Sealing Ltr. (Dkt.
3 No. 266) at 2)

4 As an initial matter, the material that Brink's now
5 seeks to seal was filed without redaction and has been on the
6 public docket since May 6, 2024. (See Dkt. No. 265-1)
7 Accordingly, the motion to seal this material will be denied as
8 moot. See *Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*,
9 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015) ("[T]here is no
10 justification for keeping the information that has already been
11 public under seal.")

12 In any event, these excerpts address three topics --
13 the fact that (1) Brink's has added new locking mechanisms; (2)
14 only the tractor portion of the tractor-trailer was armored at
15 the time of the theft; and (3) Brink's had electronic locking
16 mechanisms available to it at the time of the theft. I have
17 previously ruled are not appropriate for sealing. As to (1)
18 and (3), I ruled today that these matters do not justify
19 sealing. As to whether the trailer was armored, I have
20 previously ruled that this subject does not justify sealing.
21 (Hearing Tr. (Dkt. No. 233) at 25))

22 I will now turn to defendants' sealing requests.

23 The defendants have moved to seal tax return documents
24 that are attached as exhibits to the Redmond declaration. (See
25 Redmond Decl. (Dkt. No. 251), Exs. 1-44 to 1-55, 1-87; Def.

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1 Sealing Ltr. (Dkt. No. 268) at 2-3)

2 Defendants have also moved to seal inventory figures
3 that were obtained from these same tax return documents. The
4 inventory figures are disclosed in Brink's Local Rule 56.1
5 statement at Nos. 113, 144, 171, 217, 239, 267, 283, 301, 330
6 and 357, and also in defendant's response to Brink's Local Rule
7 56.1 statement (Def. Sealing Ltr. (Dkt. No. 268) at 2-3)

8 Brink's opposes defendant's sealing requests, stating
9 that only social security numbers and tax identification
10 numbers should be redacted from defendant's tax return
11 documents (Pltff. Sealing Ltr. (Dkt. No. 266) at 5)

12 Defendant's motion to seal their tax documents and
13 inventory figures derived from their tax documents is granted.
14 It is well established that tax returns are subject to sealing.
15 *See, e.g., Saleem v. Corp. Transp. Grp., Ltd.*, 52 F. Supp. 3d
16 526, 546 (S.D.N.Y. 2014) (ordering that plaintiff's tax returns
17 be filed under seal because they "contain sensitive financial
18 information"); *Solomon v. Siemens Indus., Inc.*, 8 F. Supp. 3d
19 261, 285 (E.D.N.Y. 2014) ("Tax returns are generally afforded
20 special protection from public disclosure").

21 Moreover, disclosure of Defendants' inventory figures
22 could cause them competitive harm in the marketplace. *See*
23 *Skyline Steel, LLC v. PilePro, LLC*, 101 F. Supp. 3d 394, 412-13
24 (S.D.N.Y. 2015).

25 Plaintiff's motion to seal is granted in part and

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1 denied in part, as I have just explained.

2 Defendants' motion to seal is granted.

3 By December 6, 2024, plaintiff will file, on the
4 public docket, unredacted versions of currently sealed
5 documents that the Court is has ruled are not entitled to
6 sealing.

7 Mr. Redmond, anything you want to say at this point on
8 behalf of Brink's.

9 MR. REDMOND: Nothing from Brink's, your Honor.

10 Thank you.

11 THE COURT: And Mr. Kroll and Mr. Shuman, anything you
12 want to say on behalf of your clients?

13 MR. SHUMAN: This is Steve Shuman.

14 Nothing, your Honor, from me.

15 MR. KROLL: This is Gerry Kroll.

16 Nothing from us, your Honor.

17 Thank you so much.

18 THE COURT: All right.

19 Thank you, and good day to all of you.

20 (Adjourned)